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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

DAVID WALKER, DEBBIE WALKER, et
al.

Plaintiffs,

vs.

CITY OF OREM, a Utah municipality, et
al.,

Defendants.

**MEMORANDUM IN SUPPORT OF
HAROLD PETERSON'S MOTION IN
LIMINE TO EXCLUDE DEBBIE
WALKER'S HEARSAY STATEMENTS**

Case No. 2:02-CV-0253 ST
Judge Ted Stewart
Magistrate David O. Nuffer

INTRODUCTION

During her deposition, Debbie Walker testified that on the afternoon of the shooting, Tandy Sleight (David Walker's soon to be ex-wife) told David Walker over the telephone that she was not going to allow him to see the parties' children over the Christmas holiday. Debbie Walker further speculated that this conversation somehow affected David Walker's mood and led to his actions later that evening. Because Debbie Walker was not a party to this conversation, however, the alleged statements constitute hearsay and are inadmissible under Federal Rule of Evidence 802. The statements are further irrelevant to David Walker's actions at the time of his shooting and run a risk of misleading the jury into somehow providing a

justification for his actions. They are thus subject to further exclusion under Federal Rules of Evidence 402 and 403.

ARGUMENT

Under Rules 801 and 802, an out-of-court statement “offered in evidence to prove the truth of the matter asserted” qualifies as hearsay and is inadmissible unless it meets one of specifically delineated exceptions to the hearsay rule. Fed. R. Evid. 801 and 802. Further, where the hearsay statement actually involves “hearsay within hearsay,” also commonly referred to as double hearsay, each part of the combined statement must “conform[] with an exception to the hearsay rule” or is likewise subject to complete exclusion. Fed. R. Evid. 805.

Here, Ms. Sleight’s alleged statement(s) to David Walker constitute the first level of hearsay. David Walker’s repetition of Ms. Sleight’s alleged statement(s) to Debbie Walker then constitutes the second level. If allowed, Debbie Walker will testify as to the substance of Ms. Sleight and David Walker’s telephone conversation in order to prove the truth of the matter asserted—that Ms. Sleight would not allow David Walker to visit the parties’ children. These statements thus qualify as double hearsay and are subject to exclusion.

In addition to the hearsay problems, it is further difficult to conceive how Ms. Sleight’s alleged statements have any bearing whatsoever on David Walker’s actions on the evening of his shooting. The alleged conversation took place hours before the shooting and any conceivable emotional difficulties resulting from that conversation does not justify stealing a vehicle, leading police on a long chase, and endangering Sergeant Peterson’s life. The sole purpose of Debbie Walker offering this testimony would to be garnish some sort of sympathy for David Walker. The statements are therefore irrelevant to whether or not Sergeant Peterson’s actions were

reasonable and run the risk of confusing the issues and misleading the jury. This Court should therefore exclude the hearsay statements from evidence.

CONCLUSION

For the reasons set forth above, Sergeant Peterson respectfully request that the Court preclude Debbie Walker from testifying as to David Walker's telephone conversation with Ms. Sleight on the afternoon of the shooting.

DATED this 2nd of October, 2007.

SNOW, CHRISTENSEN & MARTINEAU

/s/ Andrew M. Morse _____
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2007, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF HAROLD PETERSON'S MOTION IN LIMINE TO EXCLUDE DEBBIE WALKER'S HEARSAY STATEMENTS** to be served, *via electronically*, upon the following:

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